



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 2, 24, 30, 70, 90, 91, and 188

[Docket No. USCG-2011-0363]

RIN 1625-AB71

Seagoing Barges

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; withdrawal.

---

SUMMARY: The Coast Guard is withdrawing its direct final rule published on December 14, 2011. The direct final rule notified the public of the Coast Guard's intent to revise regulations for the inspection and certification of seagoing barges to align with the language of the applicable statutes. We are withdrawing that rule because we received two adverse comments. That rule will not become effective as scheduled. Instead, we plan to consider these issues in a notice of proposed rulemaking.

DATES: The direct final rule published December 14, 2011, (76 FR 77712), is withdrawn on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket

Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0363 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail Mr. Ken Smith, U.S. Coast Guard, telephone 202-372-1413, e-mail [Ken.A.Smith@uscg.mil](mailto:Ken.A.Smith@uscg.mil). If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 14, 2011, we published a direct final rule entitled "Seagoing Barges" in the Federal Register (76 FR 77712). That rule would have redefined "seagoing barge" in 46 CFR parts 90 and 91 and would have revised 46 CFR parts 2, 24, 30, 70, 90, 91, and 188 to exempt specified seagoing barges from inspection and certification to align Coast Guard regulations with the language of the applicable statutes.

In 1983, sec 2101(32), Public Law 98-89, 97 Stat. 500 (46 U.S.C. 2101) redefined "seagoing barge" as a non self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line. Coast Guard regulations at 46 CFR 91.01-10(c) do not reflect the language change and instead refer to seagoing barges as vessels "on the high seas or ocean." The withdrawn rule would have changed the language in 46 CFR 91.01-10 from "on the high seas or ocean" to "beyond the Boundary Line" to reflect the language of Public Law 98-89.

In 1993, Congress exempted from inspection seagoing barges that are unmanned and 1) not carrying hazardous material as cargo, or 2) carrying a flammable or combustible liquid, including oil, in bulk. (See Coast Guard Authorization Act of 1993, Public Law 103-206, 107 Stat. 2419 (46 U.S.C. 3302(m).) Also in 1993, we stopped requiring the specified seagoing barges to be inspected in compliance with Public Law 103-206. However, we did not amend our regulations to reflect the exemption. That withdrawn rule would have changed the language concerning seagoing barges in 46 C.F.R. 90.05-25, and 46 CFR 91.01-10, and in the vessel inspection tables in 46 CFR parts 2, 24, 30, 70, 90, and 188, to reflect the exemption created by Public Law 103-206.

We published the withdrawn rule as a direct final rule under 33 CFR 1.05-55 because we considered the rule to be noncontroversial and therefore did not expect any adverse comments. In the direct final rule, we notified the public of our intent to make the rule effective on April 12, 2012, unless an adverse comment or notice of intent to submit an adverse comment was received on or before February 13, 2012.

We received two submissions from the same commenter during the comment period, and we determined that both are adverse comments, as explained below. As such, we are withdrawing the direct final rule. We plan to consider the issues raised in the adverse comments in a notice of proposed rulemaking.

#### Withdrawal

We received two comments in response to the direct final rule. In the first comment, the commenter stated that without a definition of the term "oil in bulk," the rule would be ineffective. In the second comment, the commenter stated that without a definition of the term "manned," the rule would be ineffective. In the direct final rule, we explained that a comment is considered adverse if the commenter explains why this rule or part of this rule would be inappropriate, including a challenge to

its underlying premise or approach, or would be ineffective or unacceptable without a change. We have determined that both comments received are adverse comments.

In the first comment, the commenter expressed concern that, without a definition of "in bulk," the rule does not make it clear whether a barge that carries flammable or combustible liquids, including oil, in bulk for use by the vessel and not as cargo, is exempt from inspection and certification. Furthermore, the commenter asked at what quantity of such flammable or combustible liquid carried in bulk is the barge no longer considered exempt under the rule. The commenter also expressed concern that without a definition of "in bulk," barges that carry flammable or combustible liquid, including oil, in bulk as cargo would be subject to inspection regardless of how small the quantity.

In the second comment, the commenter requested a definition for the term "manned," and stated that without such a definition, the rule would be ineffective. The commenter was concerned that there are times when barges that do not require manning to operate have personnel on board to prepare the barges for transfer and off-load, and that without a definition in the rule, it is not clear

whether barges with personnel permissively on board require inspection or are exempt.

Authority

We issue this notice of withdrawal under the authority of 33 U.S.C. 494, 502, 525, 33 CFR 1.05-55, and Department of Homeland Security Delegation No. 0170.1.

Because we consider these comments to be adverse, we are withdrawing the direct final rule. We plan to seek comment on these concerns in a forthcoming notice of proposed rulemaking.

J. G. LANTZ  
Director of Commercial Regulations and Standards  
U.S. Coast Guard

[FR Doc. 2012-8310 Filed 04/05/2012 at 8:45 am; Publication Date: 04/06/2012]